

IN THE MISSOURI COURT OF APPEALS
EASTERN DISTRICT

No. ED84450

JAMES HIGHFILL and DANIEL HIGHFILL,

Appellants,

vs.

MARY HALE,

Respondent.

ON APPEAL FROM THE CIRCUIT COURT OF OSAGE COUNTY

The Honorable Jeffrey W. Schaeperkoetter

APPELLANT'S BRIEF

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JURISDICTIONAL STATEMENT

This is an appeal by the Plaintiffs/Appellants from a judgment of the Circuit Court of Osage County as to Count III of their Second Amended Petition.

Appellants brought this action seeking a jury verdict for damages on the contention that Defendant/Respondent Mary Hale intentionally instigated their restraint and subsequent false imprisonment.

Appellants filed their Second Amended Petition on December 10, 2002. Respondent filed an answer to the petition on December 19, 2002, and then filed a Motion for Summary Judgment on January 22, 2003. Partial Summary Judgment as to Count II in favor of Respondent was granted on March 19, 2003. Respondent filed a Motion for Summary Judgment as to Count III of the Second Amended Petition on January 9, 2004. Summary Judgment as to Count III in favor of Respondent was granted on March 17, 2004. Appellants filed their Notice of Appeal on April 21, 2004. Appellants filed the Legal File for this appeal on May 12, 2004. On June 7, 2004, this Court requested Appellants show cause as to the appealability of this case pursuant to Missouri Supreme Court Rule 74.01(b). On July 16, 2004, this Court accepted the Appellants' showing of cause and certified this appeal to proceed.

As this is not an appeal involving the validity of a treaty or statute of the

United States, involving the validity of a Missouri statute or Constitutional provision, involving the construction of revenue laws, involving the title to a state office, nor a criminal appeal where the sentence is death, the Missouri Supreme Court does not have exclusive jurisdiction pursuant to Article V, § 3 of the Missouri Constitution. Therefore, jurisdiction of this Court is proper. This Court has territorial jurisdiction over this appeal pursuant to RSMo § 477.050 (2000).

STATEMENT OF FACTS

In the seven months prior to September 21, 2001, Respondent Mary Hale called the Gasconade County Sheriff's Office on 27 occasions to complain of "harassing" conduct on the part of her neighbors, Appellants James and Daniel Highfill. *L.F. 142*. In fact, one week prior to the arrest of the Appellants on September 21, 2001, and as a result of numerous calls from Respondent to the sheriff's office, Gasconade County Sheriff Glen Ebker informed the Appellants, "if the calls don't stop, someone's gonna (*sic.*) get arrested." *L.F. 143*. See also *L.F. 282, 287, 290*.

On September 21, 2001, Respondent contacted the Gasconade County Sheriff's Department on three occasions. *L.F. 189*. The first two phone calls were made to inquire into previous complaints made regarding an ongoing dispute with Appellant. *L.F. 189*. In response to the third call, Deputies Casey Hatton and Matthew Oller from the Sheriff's department were dispatched to Respondent's residence to investigate a "shots fired" incident. *L.F. 42*. During his investigation, Deputy Hatton was informed by Respondent that she had heard what she believed to be a gun shot and felt pain in her left elbow. *L.F. 268*. Deputy Hatton's narrative report of his investigation on September 21, 2001 describes the subsequent events as follows:

While at the Hale residence, [Deputy Hatton] saw the fence [between Appellants' and Respondent's properties] that [Respondent] has filed numerous complaints about. . . .While looking at the fence, [Deputy Hatton] noticed someone walking on the back side of it, and climbing a ladder to look through a panel of "one-way" glass that had been installed in the fence. *Id.*

Because both Deputies Hatton and Oller were aware of the numerous complaints made by Respondent to the Gasconade County Sheriff's Department regarding the Appellants, Deputy Hatton and Deputy Matthew Oller then entered Appellants' property to continue their investigation. *L.F. 45.* Deputy Hatton spoke with Appellant Daniel Highfill and indicated in his report that, "Danny was uncooperative with my investigation, and was arrested for stalking." *L.F. 269.* Shortly thereafter, James Highfill was identified by Deputy Hatton as the "person looking through the 'one way' glass by his white tennis shoes," and was also arrested for stalking. *Id.* Deputy Oller admitted contacting the prosecuting attorney prior to arresting the Appellants because, "this was quite a storied incident, that everything had been going on for quite a while..." *L.F. 146.* See also *L.F. 277.*

Both Deputy Oller and Sheriff Ebker have acknowledged that contacting the prosecutor prior to effectuating an arrest is not necessarily standard procedure, and is reserved for special circumstances. *L.F. 277, 283.* Respondent had made a legal claim of stalking against the Appellants prior to September 21, 2001, and her

petition was dismissed upon the Circuit Court judge's finding that no "stalking" had occurred. *L.F. 150*. Also, the prosecuting attorney did not file any charges as a result of the arrest of the Appellants on September 21, 2001. *L.F. 275*.

Following the events in September 2001, Respondent has since been convicted of falsely accusing Appellant Daniel Highfill of assault and for fabricating evidence.

L.F. 151, 453.

During the course of their false arrest, Deputy Oller used excessive force against Appellant James Highfill in pushing him into the police car, severely aggravating a preexisting degenerative condition of his cervical spine and causing the herniation of two discs. *L.F. 20*. Furthermore, after being transported to the Montgomery County Jail, Appellants' civil rights were violated. *L.F. 21*. As a result of the arrest instigated by the Respondent through her numerous false complaints over a period of seven months, the Appellants allege damages sustained from the excessive force used by the Gasconade County Sheriff's Department and the violation of their civil rights as incurred by their false imprisonment. *L.F. 238*.

POINT RELIED ON

**I. THE TRIAL COURT ERRED IN GRANTING RESPONDENT'S
MOTION FOR SUMMARY JUDGMENT IN THAT:**

- (a) A DEFENDANT'S COURSE OF CONDUCT OVER AN
EXTENDED PERIOD OF TIME MAY PROVIDE
SUFFICIENT EVIDENCE TO SHOW THAT THE
DEFENDANT INSTIGATED A FALSE ARREST AND**
- (b) A GENUINE ISSUE OF MATERIAL FACT EXISTS AS
TO WHETHER A CONNECTION EXISTED
BETWEEN THE DEFENDANT'S REPEATED
COMPLAINTS AND THE ARREST OF THE
APPELLANTS.**

Smith v. Allied Supermarkets, Inc., 524 S.W.2d 848 (Mo. banc 1975).

Day v. Wells Fargo Guard Service Co., 711 S.W.2d 503 (Mo. banc 1986).

ARGUMENT

Standard of Review

Pursuant to Missouri Supreme Court Rule 74.04, a motion for Summary Judgment may be granted “when a movant demonstrates, . . . , that there is no genuine issue as to any material fact and that movant is entitled to judgment as a matter of law.” *Rankin v. Venator Group Retail, Inc.*, 93 S.W.3d 814 (Mo.App. E.D. 2002). The appropriate standard for reviewing a summary judgment is *de novo*. *Id.* See also *ITT Commercial Finance Corp. v. Mid-America Marine Supply Corp.* 854 S.W.2d 371, 376 (Mo. banc 1993). If there exists genuine issues as to any material fact, summary judgment should not be granted. *Id.*

I. THE TRIAL COURT ERRED IN GRANTING RESPONDENT’S MOTION FOR SUMMARY JUDGMENT IN THAT:

- (a) A DEFENDANT’S COURSE OF CONDUCT OVER AN
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**TO WHETHER A CONNECTION EXISTED
BETWEEN THE DEFENDANT’S REPEATED
COMPLAINTS AND THE ARREST OF THE
APPELLANTS.**

A. Course of Conduct May Demonstrate Instigation

False imprisonment has been defined as confinement without legal justification, or the unlawful detention and restraint of a person against his will. *Parrot v. Reis*, 441 S.W.2d 390, 392 (Mo.App. 1969). In an action seeking damages for false imprisonment, “the defendant has the burden of pleading and proving, as an affirmative defense, that he had reasonable cause to believe plaintiff had committed the offense.” *Id.* As a general rule, the validity of such a defense is for the jury to determine. *Id.* (citing *Parrish v. Herron*, 225 S.W.2d 391, 397 (Mo.App. 1949).

The arresting officer in an action for false imprisonment is responsible for knowing all facts that could be obtained through due diligence prior to making the arrest. *Parrot*, supra 441 S.W.2d at 392. The arrest of an innocent person by an officer empowered to make an arrest is justified if the officer has a reasonable belief that the person is guilty of the offense for which he is arrested. *Rustici v. Weidemeyer*, 673 S.W.2d 762, 769 (Mo. banc 1984). Justification is a complete

defense to a cause of action for false arrest. *Id.* at 767. Moreover, a person who advised, encouraged, approved, or instigated an unlawful arrest is liable for the false imprisonment of the arrestee. *Wehrman v. Liberty Petroleum Company, Inc.*, 382 S.W.2d 56, 61 (MO.App. 1964). See also *Rustici*, *supra*; *Smith v. Allied Supermarkets, Inc.*, 524 S.W.2d 848, 852 (Mo.banc 1975) The Plaintiff is entitled to all favorable inferences that can be properly and reasonably be drawn from the evidence. *Id.*, citing *McAlister v. Uhrahn*, 492 S.W.2d 19 (Mo.App. 1973).

In granting the Respondent's Motion for Summary Judgment, the trial court asserted:

3. Even if Defendant Mary Hale's initial report has been totally false, the deputy's first hand observations of conduct that he thought was criminal, which was unrelated to the original report, created a disconnect such that, as a matter of law, Defendant Mary Hale can have no civil liability for false imprisonment. *L.F.* 476-77.

The Appellants have identified two primary problems with the court's assertion.

The first problem arises from the definition of stalking in RSMo § 565.225 (2000), which states that to be guilty of the crime of stalking (the crime for which the Appellants were arrested), an individual must purposely and repeatedly harass or follow with the intent to harass another person. *Id.* The trial court asserts that the original report on September 21, 2001 was sufficiently unrelated to the arrest of the Appellants that the Respondent can have no civil liability. *L.F.* 476-77.

However, in order to demonstrate probable cause for the arrest, the deputies must have considered any prior conduct that would have indicated *purposeful and repeated* harassment. (Emphasis added.) The deputies were therefore charged with evaluating the “storied” history of the conflict between the Highfills and Respondent, and the evidence in the record indicates that such an evaluation occurred. Deputy Hatton stated in his police report that, “knowing that Mrs. Hale has complained about the Highfills harassing her in the past,” led to his decision to arrest the Appellants. *L.F.* 99. It was therefore improper for the trial court to focus on the single incident on September 21, 2001, to determine if a disconnect existed between the Respondent’s original report and the Appellants’ subsequent arrest.

Secondly, the Missouri Supreme Court has held that a defendant’s course of conduct over an extended period of time may provide sufficient evidence to show that the defendant instigated false arrest. See *Smith v. Allied Supermarkets*, 542 S.W.2d 848, 852-853 (Mo. banc 1975). In *Smith*, the Missouri Supreme Court reviewed the trial court’s decision to set aside a verdict for the plaintiff in an action for false imprisonment where the plaintiff claimed instigation on the part of the defendant. *Id.* In reversing the decision of the trial court, the court reasoned that evidence taken from a five-month period of time showed that the defendant

provided information to the city police which resulted in the plaintiff's arrest. *Id.*

Additionally, in *Day v. Wells Fargo Guard Service Co.*, the Missouri Supreme Court held that based on the wrongful accusations of defendant over a period of six weeks, a jury could reasonably conclude that from the defendant's conduct over an extended period of time, the plaintiff's false arrest was instigated by the defendant. 711 S.W.2d 503 (Mo. banc 1986). In the instant case, the Respondent made 27 complaints regarding the Appellants over the course of seven months. One week prior to the arrest of the Appellants in September 2001, and as a result of the numerous calls from Respondent to the sheriff's office, Gasconade County Sheriff Glen Ebker informed the Appellants, "if the calls don't stop, someone's gonna (*sic.*) get arrested." *L.F.* 143. See also *L.F.* 282, 287, 290.

Moreover, the Respondent's complaint on September 21, 2001 did not need to expressly name the Appellants, as the numerous complaints over seven months were sufficient to implicate the Appellants. See *Smith*, 524 S.W.2d at 853.

Appellants argue that the trial court's assertion that the original report on September 21, 2001, was sufficiently disconnected from the Appellants' subsequent arrest was in error because the Respondent's course of conduct, taken in the light most favorable to the Appellants, indicate that the false arrest was instigated by the Respondent.

B. Genuine Issues of Material Fact Exist

In further concluding that Respondent was entitled to Summary Judgment, the trial court held “that there is no genuine issue as to material facts that would create a cause of action under which Defendant Mary Hale could be held liable for false imprisonment.” *L.F.* 477. This conclusion was in error, however, as there are two genuine issues of materials facts that must be heard and decided by a jury.

The first issue of material fact relates to the connection between the Respondent’s complaints and the arrest of the Appellants. The evidence in the record demonstrates a factual dispute with regard to the arresting officers’ utilization of the Respondent’s numerous complaints in their determination of probable cause. See *L.F.* 149-152. Awareness of the prior complaints by Deputies Hatton and Oller, as well as the threats made by Sheriff Ebker, demonstrate that the validity of Respondent’s complaint on September 21, 2001 would not be considered by the Gasconade County Sheriff’s Department when evaluating the existence of probable cause and the subsequent arrest of the Appellants. *L.F.* 143. See also *L.F.* 282, 287, 290. Specifically, Sheriff Ebker informed the Appellants, “if the calls don’t stop, someone’s gonna (*sic.*) get arrested.” *Id.*

Regardless of its relevance on September 21, 2001, the validity of

Respondent's complaint is now an important fact in this case, as it goes to an affirmative defense asserted by the Respondent. It is the general rule that fact determination with regard to an affirmative defense is made by a jury. See *Parrot v. Reis*, 441 S.W.2d 390, 392 (Mo.App. 1969). Furthermore, the facts taken in the light most favorable to the Appellants, demonstrate a pattern of behavior on the part of Respondent that is in dispute with the contentions of the Respondent. In her Motion for Summary Judgment, Respondent stated:

Plaintiffs were not arrested for any offense related to or reported by Mary Hale to the Gasconade County Sheriff's Department. Plaintiffs were arrested for stalking as evidenced by the fence, the one-way glass and surveillance cameras, and one had nothing to do with the other. *L.F. 46-47*.

Additionally, Respondent stated as an undisputed fact that "the fact that Mary Hale had made prior complaints to the Gasconade County Sheriff's Department had absolutely no effect on Deputy Oller's decision to have Plaintiff's arrested on September 21, 2001." *L.F. 46*. The evidence in the record demonstrates that the Appellants were in fact arrested because of Respondent's phone calls to the Gasconade County Sheriff's Department over a seven month period and that Deputy Oller specifically considered the prior complaints of Respondent in "fitting in" the allegations by Respondent to the Missouri Stalking Statute. These disputes indicate a genuine issue of material fact that was improperly ignored by the trial

court. The existence of material facts is particularly clear when considering the responsibility of the court to view the evidence in the light most favorable to the Appellants.

Finally, there exists a genuine issue of material fact as to the legitimacy of the Appellants' arrest. It is undisputed that Prosecutor Brehe-Krueger did not file charges against the Appellants for stalking. *L.F. 142*. In her Suggestions in Support of her Motion for Summary Judgment, the Respondent stated, "whether there was, in retrospect, an actual violation of Section 565.225 RSMo., by the Plaintiffs at the time is not material and is inconsequential." *L.F. 128*. Probable cause, however, is material and consequential as it goes to the legitimacy of the arrests, and the evidence of such should be viewed in the light most favorable to the Appellants. See *Smith*, 524 S.W.2d 848, 852. To be guilty of stalking, an individual must purposely and repeatedly harass another. RSMo § 565.225 (2000). "Harasses" is further defined in the statute:

[T]o engage in a course of conduct directed at a specific person that served no legitimate purpose, that would cause a reasonable person to suffer substantial emotional distress, and that actually causes substantial emotional distress to that person. *Id.*

The evidence in the record demonstrates that a dispute exists as to whether or not Deputy Hatton and Deputy Oller had the appropriate grounds to arrest the

Appellants. In his police report, Deputy Hatton stated, “Danny [Highfill] was uncooperative with my investigation, and was arrested for stalking.” *L.F.* 269.

There is a significant factual dispute as to what extent the arresting officers inquired as to the purpose of the fence, cameras, and one-way glass. Absent an inquiry into the legitimacy of their purpose, probable cause was lacking and the arrest was unlawful.

Furthermore, the evidence in the legal file supports that the Gasconade County Sheriff had indicated that someone would get arrested if the calls by Respondent did not stop. *L.F.* 143. See also *L.F.* 282, 287, 290. The record demonstrates that the observations by Deputy Hatton and Deputy Oller were tailored to fit within the Missouri Stalking Statute giving the appearance of a disconnection between the original report of Respondent on September 21, 2001, and the Appellants’ arrest on that day. The court must give full consideration of all the facts, including the ongoing conflict between the Appellants and Respondent, when taken in the light most favorable to the Appellants, there arises genuine issues of material fact with regard to the substantiation of probable cause.

CONCLUSION

When the trial court granted Respondent's Motion for Summary Judgment it erroneously concluded that the original report made by Respondent on September 21, 2001, was sufficiently disconnected to the subsequent arrest of the Appellants. Furthermore, the court was also in error in finding no genuine issue as to material facts that would create a cause of action under which Defendant Mary Hale could be held liable for false imprisonment. For the foregoing reasons, the trial court's order granting Respondent's Motion for Summary Judgment is in error. The trial court's order should be reversed in its entirety and this case remanded for trial on the count presented.

WHEREFORE, Appellant prays that the court reverse the lower court's ruling and remand this action for further proceedings.

Respectfully Submitted,

ROGER G. BROWN AND

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By _____

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the 12th day of August in the year 2004, two copies of Appellant's Brief were served on Appellees via United States Mail, Postage Pre-paid in care of their counsel, David G. Bandre and Thomas B. Snider, 225 Madison Street, 2nd Floor, Jefferson City, MO 65101 (FAX 573/635-2010).

CERTIFICATE OF COMPLIANCE

By submitting this brief, the undersigned counsel for Appellants hereby certifies the following:

- (1) this brief conforms with Missouri Rule of Civil Procedure 55.03;
- (2) this brief conforms with Missouri Rule of Civil Procedure 84.06(b) relating to length;
- (3) the number of words used in this brief, not including the appendix, is 3065.

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